

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

THE BANK OF NEW YORK MELLON) CIVIL NO. 17-00297 DKW-RLP
FKA THE BANK OF NEW YORK, AS)
TRUSTEE FOR THE CERTIFICATE) FINDINGS AND RECOMMENDATIONS TO
HOLDERS OF THE CWMBS INC., CHL) GRANT PLAINTIFF'S MOTION TO
MORTGAGE PASS- THROUGH TRUST) STRIKE ANSWER OF DEFENDANTS LEN
2006-OA5, MORTGAGE PASS) C. PERRY AND 3925 KAMEMEHA RD
THROUGH CERTIFICATES, SERIES) PRINCEVILLE, HI 96722, LLC
2006-OA5, a Delaware)
corporation,)
)
Plaintiffs,)
)
vs.)
)
LEN C. PERRY JR.; NATHAN JON)
LEWIS; 3925 KAMEHAMEHA RD)
PRINCEVILLE, HI 96722, LLC,)
)
Defendants.)
)

FINDINGS AND RECOMMENDATIONS TO GRANT PLAINTIFF'S
MOTION TO STRIKE ANSWER OF DEFENDANTS LEN C. PERRY
AND 3925 KAMEMEHA RD PRINCEVILLE, HI 96722, LLC¹

Before the Court is Plaintiff's Motion to Strike Answer of Defendants Len C. Perry and 3925 Kamemeha Rd Princeville, HI 96722, LLC, filed on August 23, 2017 ("Motion"). ECF No. 20. Defendant Len C. Perry, Jr. filed an Opposition and "Alternate Motion to Set Aside Judge's Judgment" on September 11, 2017. ECF No. 25. Plaintiff did not file a reply. After careful review of

¹ Within fourteen days after a party is served with a copy of the Findings and Recommendation, that party may, pursuant to 28 U.S.C. § 636(b)(1), file written objections in the United States District Court. A party must file any objections within the fourteen-day period allowed if that party wants to have appellate review of the Findings and Recommendation. If no objections are filed, no appellate review will be allowed.

the papers filed in this action and the applicable legal authority, the Court FINDS AND RECOMMENDS that the district court GRANT the Motion.

BACKGROUND

Plaintiff filed this action on June 21, 2017, seeking cancellation of certain instruments based on Defendants' alleged improper and fraudulent recordings in the land records. See ECF No. 1. Plaintiff asserts claims against Defendants for cancellation of instruments, quiet title, slander of title, unjust enrichment, and declaratory judgment. Id. ¶¶ 39-93.

On August 6, 2017, Defendant Nathan Jon Lewis filed an Answer. See ECF No. 17. Although not entirely clear from the filing, it appears that Mr. Lewis is attempting to respond to the Complaint on behalf of the other Defendants. Specifically, Mr. Lewis states that he is "acting Trustee for the Len C. Perry, Jr. account," and that he is "the authorized Trustee and have a Special Power of attorney over this matter to represent Len C. Perry, Jr. [] as his agent." Id. ¶¶ A, K. Further, Mr. Lewis states that he is "the sole member of 3925 Kamehameha Rd Princeville HI 96722, LLC." Id. ¶ L. In the present Motion, Plaintiff asks the Court to strike the Answer filed by Mr. Lewis to the extent that the Answer purports to have been filed on behalf of Mr. Perry and 3925 Kamehameha Rd Princeville, HI 96722, LLC. ECF No. 20.

ANALYSIS

Rule 12(f) of the Federal Rules of Civil Procedure provides that the court "may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." Fed. R. Civ. P. 12(f). Mr. Lewis, a non-attorney appearing pro se, cannot file pleadings or other papers with the Court on behalf of another individual or corporate entity. Although "parties may plead and conduct their own cases personally," see 28 U.S.C. § 1654, "the right to proceed pro se in civil cases is a personal right" and a person appearing pro se has no authority to represent others, see C.E. Pope Equity Trust v. United States, 818 F.2d 696, 697 (9th Cir. 1987); see also Hou 1778 Hawaiians v. United States Dep't of Justice, CIVIL NO. 15-00320 SOM/BMK, 2016 WL 335851, at *3 (D. Haw. Jan. 27, 2016). Accordingly, Mr. Lewis, as a pro se defendant, cannot represent Defendants Len C. Perry, Jr. or 3925 Kamehameha Rd Princeville, HI 96722 LLC in this action.

Mr. Perry may represent himself in this action, as he did in filing his Opposition. See ECF No. 25. However, 3925 Kamehameha Rd Princeville, HI 96722 LLC must be represented by an attorney. See Local Rule 83.11 ("[b]usiness entities, including but not limited to . . . limited liability corporations . . . cannot appear before this court pro se and must be represented by an attorney"); Rowland v. Cal. Men's Colony, 506 U.S. 194, 201-02

(1993) ("It has been the law for the better part of two centuries . . . that a corporation may appear in the federal courts only through licensed counsel."); Taylor v. Knapp, 871 F.2d 803, 806 (9th Cir. 1989) ("The general rule, widely recognized in federal and state courts, is that a corporation can appear only through an attorney."). The Court FINDS and RECOMMENDS that the district court GRANT Plaintiff's Motion to Strike Answer of Defendants Len C. Perry and 3925 Kamemeha Rd Princeville, HI 96722, LLC and consider the Answer filed by Mr. Lewis on August 2, 2017, as his Answer only.

Finally, to the extent Mr. Perry is seeking relief in his Opposition, the Court RECOMMENDS that the district court DENY the request. The Court is unable to ascertain the "judge's judgment" that Mr. Perry asks to "set aside." See ECF No. 25. The Court rejects Mr. Perry's arguments that the attorneys representing Plaintiff acted fraudulently by using their middle initials instead of their full middle names in court filings. See id. at 5-9.

CONCLUSION

The Court FINDS AND RECOMMENDS that the district court GRANT Plaintiff's Motion to Strike Answer of Defendants Len C. Perry and 3925 Kamemeha Rd Princeville, HI 96722, LLC and DIRECT Len C. Perry, Jr. and 3925 Kamehameha Rd Princeville, HI 96722 LLC to file a response to the Complaint no later than seven days

after this district court adopts this Findings and Recommendation. The Court also RECOMMENDS that the district court DENY any relief requested in Len C. Perry, Jr.'s Opposition.

IT IS SO FOUND AND RECOMMENDED.

DATED HONOLULU, HAWAII, OCTOBER 2, 2017.




Richard L. Puglisi
United States Magistrate Judge

THE BANK OF NEW YORK MELLON V. PERRY, ET AL, CIVIL NO. 17-00297
DKW-RLP; FINDINGS AND RECOMMENDATIONS TO TO GRANT PLAINTIFF'S MOTION
TO STRIKE ANSWER OF DEFENDANTS LEN C. PERRY AND 3925 KAMEMEHA RD
PRINCEVILLE, HI 96722, LLC